

APPEAL NO. 041592
FILED AUGUST 25, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 8, 2004. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) reached maximum medical improvement (MMI) on November 17, 2003, with a 24% impairment rating (IR). The appellant (carrier) appeals, contending that no evidence supports the hearing officer's decision, or alternatively, that the hearing officer's decision is against the great weight and preponderance of the evidence. The carrier requests that we render a decision that the claimant reached MMI on December 15, 2003, with a 5% IR as reported by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission), or that we remand the case to the hearing officer. The claimant asserts that the great weight of the evidence supports the hearing officer's decision and requests affirmance.

DECISION

Affirmed.

It is undisputed that on _____, the claimant sustained a compensable injury to his neck and left shoulder. In February 2003 he underwent surgery on his left shoulder, and in June 2003 he underwent surgery on his cervical spine. The disputed issues at the CCH were MMI and IR. Sections 408.122(c) and 408.125(c) provide that the MMI and IR report of the designated doctor has presumptive weight, and the Commission shall base its determinations of MMI and IR on the designated doctor's report unless the great weight of the other medical evidence is to the contrary. The Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000), applies to this case.

The claimant's treating doctor reported that the claimant reached MMI on November 17, 2003, with a 26% IR. The treating doctor assigned the claimant 15% impairment under Diagnosis-Related Estimate (DRE) Cervicothoracic Category III (Radiculopathy) and 13% impairment for the left shoulder, which he combined under the Combined Values Chart to arrive at a combined IR value of 26%. The designated doctor reported that the claimant reached MMI on December 15, 2003, with a 5% IR. The designated doctor assigned the claimant 5% impairment under DRE Cervicothoracic Category II (Minor Impairment).

The hearing officer found that the designated doctor's IR was contrary to the great weight of the other medical evidence. The hearing officer adopted the MMI date and IR assigned by the treating doctor, with a correction of the IR for an addition error in arriving at the upper extremity impairment for abnormal range of motion (ROM). As

corrected for the addition error, the treating doctor's IR, as recalculated by the hearing officer, is 24%. The claimant agrees with the hearing officer's determinations.

With regard to the carrier's assertion that the claimant does not have cervical radiculopathy, there is some medical evidence that the claimant has abnormally diminished left upper extremity reflexes and an EMG verified cervical radiculopathy. The treating doctor, who is also the surgeon who performed the left shoulder surgery, provided evidence that the claimant had a resection of the distal clavicle and loss of ROM of the left shoulder. Conflicting evidence was presented on the issues. Whether the great weight of the medical evidence was contrary to the designated doctor's report presented a fact question for the hearing officer to resolve from the evidence presented. The hearing officer explained his determination in his decision. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's determinations on the issues of MMI and IR are supported by sufficient evidence and are not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **UNITED STATES FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**PAUL DAVID EDGE
6404 INTERNATIONAL PARKWAY, SUITE 1000
PLANO, TEXAS 75093.**

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Margaret L. Turner
Appeals Judge